

Exhibit A

Lachman, Matthew

From: Lachman, Matthew
Sent: Thursday, October 24, 2024 3:56 PM
To: Bruns, Michael (CIV); Hoffman, Andy; James, Jhaniel N. (CIV); Sternhell, Philip C. (CIV); Dunn, Hayley A. (CIV); Nagumotu, Kavyasri (CIV); 'Imbacuan, Michael (HHS/OGC)'; 'Yueh, Lena (HHS/OGC)'
Cc: '#KEModernaSpikevaxService'; 'Arbutus_MoFo'; Genevant Team
Subject: RE: Arbutus v. Moderna, 22-cv-252 (D. Del.) - CDC and ASPR Depositions
Attachments: Draft Agency Business Record Certification(11737433.1).docx

Michael,

Thank you, that affidavit identifying the number of doses to each federal agency partner will resolve the issue.

The only remaining issue we wanted to raise is authentication and business record certifications for the documents produced by the Government. The HHS affidavit we've been discussing and certifications from the producing agencies will resolve all outstanding discovery issues Plaintiffs have with the Government. Business record certifications will also avoid any potential future disputes relating to trial subpoenas etc. A draft certification is attached—please let us know if you have any edits.

Best,

Matt

Matthew W. Lachman
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From: Bruns, Michael (CIV) <Michael.Bruns@usdoj.gov>
Sent: Thursday, October 24, 2024 12:54 PM
To: Lachman, Matthew <MLachman@wc.com>; Hoffman, Andy <AHoffman@wc.com>; James, Jhaniel N. (CIV) <Jhaniel.N.James@usdoj.gov>; Sternhell, Philip C. (CIV) <Philip.C.Sternhell@usdoj.gov>; Dunn, Hayley A. (CIV) <Hayley.A.Dunn@usdoj.gov>; Nagumotu, Kavyasri (CIV) <Kavyasri.Nagumotu@usdoj.gov>; 'Imbacuan, Michael (HHS/OGC)' <Michael.Imbacuan@hhs.gov>; 'Yueh, Lena (HHS/OGC)' <Lena.Yueh@hhs.gov>
Cc: '#KEModernaSpikevaxService' <KEModernaSpikevaxService@kirkland.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Genevant Team <GenevantTeam@wc.com>
Subject: RE: Arbutus v. Moderna, 22-cv-252 (D. Del.) - CDC and ASPR Depositions

Matt,

Providing the total number of doses distributed to agency partners is an undue burden on the CDC. First, this data is no longer easily searched. The CDC will need to reconstitute the data into a searchable format, and then build searches to pull the appropriate data. There may be technical difficulties that would prevent reconstitution of the data. Undertaking this process, as well as resolving any underlying technical difficulties, is an undue burden on the CDC because it is not proportional to the needs of the case – especially as we are willing to provide the number of doses donated.

However, despite the burden, the CDC is willing to provide an affidavit on the total doses to federal agency partners with the express understanding that this will resolve all disputes relating to the subpoenas issued to HHS agencies. As for any data covered by an NDA, HHS will undertake efforts to get the consent of the other parties.

Finally, we cannot supply an affidavit on international doses by Friday, but can aim to supply an affidavit by the end of next week.

Best,

Michael

From: Lachman, Matthew <MLachman@wc.com>

Sent: Thursday, October 24, 2024 11:23 AM

To: Bruns, Michael (CIV) <Michael.Bruns@usdoj.gov>; Hoffman, Andy <AHoffman@wc.com>; James, Jhaniel N. (CIV) <Jhaniel.N.James@usdoj.gov>; Sternhell, Philip C. (CIV) <Philip.C.Sternhell@usdoj.gov>; Dunn, Hayley A. (CIV) <Hayley.A.Dunn@usdoj.gov>; Nagumotu, Kavyasri (CIV) <Kavyasri.Nagumotu@usdoj.gov>; 'Imbacuan, Michael (HHS/OGC)' <Michael.Imbacuan@hhs.gov>; 'Yueh, Lena (HHS/OGC)' <Lena.Yueh@hhs.gov>

Cc: '#KEModernaSpikevaxService' <KEModernaSpikevaxService@kirkland.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Genevant Team <GenevantTeam@wc.com>

Subject: [EXTERNAL] RE: Arbutus v. Moderna, 22-cv-252 (D. Del.) - CDC and ASPR Depositions

Michael,

Can you confirm that you will be providing an affidavit that includes a breakdown between agencies? If not, given the Court's deadline tomorrow, please let us know when you are available to meet and confer this afternoon.

Thanks,

Matt

Matthew W. Lachman

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From: Lachman, Matthew

Sent: Tuesday, October 22, 2024 7:03 PM

To: Bruns, Michael (CIV) <Michael.Bruns@usdoj.gov>; Hoffman, Andy <AHoffman@wc.com>; James, Jhaniel N. (CIV) <Jhaniel.N.James@usdoj.gov>; Sternhell, Philip C. (CIV) <Philip.C.Sternhell@usdoj.gov>; Dunn, Hayley A. (CIV) <Hayley.A.Dunn@usdoj.gov>; Nagumotu, Kavyasri (CIV) <Kavyasri.Nagumotu@usdoj.gov>; Imbacuan, Michael (HHS/OGC) <Michael.Imbacuan@hhs.gov>; Yueh, Lena (HHS/OGC) <Lena.Yueh@hhs.gov>

Cc: '#KEModernaSpikevaxService' <KEModernaSpikevaxService@kirkland.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Genevant Team <GenevantTeam@wc.com>

Subject: RE: Arbutus v. Moderna, 22-cv-252 (D. Del.) - CDC and ASPR Depositions

Michael,

We appreciate your offer to provide an affidavit on how many of the "Federal" category doses were donated internationally as opposed to being sent to federal agencies. We note that the Government's current position conflicts with testimony from Dr. Santoli that the "Federal" label does not include doses donated to foreign governments. Santoli

Tr. at 89:6-13. We assume that the affidavit corrects that testimony. Please let us know whether the affidavit will be provided before this Friday, October 25.

We disagree with your arguments and objection to our request for agency-specific distribution data. HHS agreed to produce documents “sufficient to show the distribution of batches, lots, and/or doses of vaccine acquired by the Government under the -0100 Contract.” HHS purportedly did this by producing HHS-0000418, among other documents, and agreeing to offer deposition testimony on the data therein. When asked about the identity of the federal agencies encompassed by the “Federal” label used in HHS-0000418, Dr. Santoli readily identified seven agencies, but was unable to identify the number of doses distributed to four of those agencies: HRSA, State, FEMA, and HHS. Santoli Tr. at 40:16-41:4; 85:17-87:14. We do not understand why it would be burdensome for the Government to identify how many doses were sent to each of these four agencies, especially in light of the Government’s identification of doses sent to other agencies and Dr. Johnson’s testimony that the Government “never shipped out a dose without a document.” Johnson Tr. at 102:20-21. The Government’s vague assertions of burden and hypothetical confidentiality concerns do not alleviate it of its discovery obligations. Please confirm that the Government will provide the number of doses distributed to HRSA, State, FEMA, and HHS; substantiate the asserted burden of collecting this information, including identifying NDAs that make it burdensome to acquire the information; or provide your availability to meet and confer on Thursday, October 24.

If the Government is able to provide the requested information, we can agree to accept your representation that the CDC is unable to disambiguate between administrations to federal agency employees versus individuals not employed by the federal government, and all disputes relating to subpoenas issued to HHS agencies will be resolved.

Best,

Matt

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From: Bruns, Michael (CIV) <Michael.Bruns@usdoj.gov>

Sent: Monday, October 21, 2024 7:20 PM

To: Lachman, Matthew <MLachman@wc.com>; Hoffman, Andy <AHoffman@wc.com>; James, Jhaniel N. (CIV) <Jhaniel.N.James@usdoj.gov>; Sternhell, Philip C. (CIV) <Philip.C.Sternhell@usdoj.gov>; Dunn, Hayley A. (CIV) <Hayley.A.Dunn@usdoj.gov>; Nagumotu, Kavyasri (CIV) <Kavyasri.Nagumotu@usdoj.gov>; Imbacuan, Michael (HHS/OGC) <Michael.Imbacuan@hhs.gov>; Yueh, Lena (HHS/OGC) <Lena.Yueh@hhs.gov>

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; Genevant Team <GenevantTeam@wc.com>

Subject: RE: Arbutus v. Moderna, 22-cv-252 (D. Del.) - CDC and ASPR Depositions

Matt,

There is no basis to involve the court at this time. The CDC will be able to provide you an affidavit on how many of the Federal category doses were donated internationally as opposed to being sent to Federal agencies. The CDC does not have data on the number of doses that were administered to federal agency employees versus individuals not employed by the federal government. It is unduly burdensome for the CDC to provide additional information.

We disagree with your characterization of the depositions of Drs. Jeanne Santoli and Robert Johnson. First, as to the Government’s objections, you have not identified a single inappropriate objection in your email. The Government maintains the appropriateness of each objection.

Second, the purported “deficiencies” in the witnesses testimony appear to relate solely to HHS-0000418 and HHS-0000419 and https://data.cdc.gov/Vaccinations/COVID-19-Vaccinations-in-the-United-States-Jurisdic/b7fc/about_data. You were provided these documents and pointed to this website over a year ago, in July of 2023, and only now do you seek additional, granular information through the backdoor of supposed “deficiencies” in deposition testimony. Drs. Johnson and Santoli were well prepared for their deposition, and no witness is expected to remember exact data or minutia as part of their responsibilities in preparing for a 30(b)(6) deposition.

The time to seek additional, granular information not reflected in these spreadsheets was during document production and our negotiations.

As for your requests, the CDC is the data owner for the information requested. First, it is unduly burdensome for the CDC to further granularize the information to identify how many doses were sent to each agency. It is a heavy burden on the CDC to make this data accessible and then perform the queries requested. Further, these doses only account for approximately 5% of all shipped doses in the Federal category, with the remainder being doses donated internationally. Finally, at least some of these shipments to federal agencies may be subject to NDAs, which heightens the burden of making the data accessible. However, solely to avoid burdening the Court with a dispute, CDC is willing to provide an affidavit regarding the number of doses in the “Federal” category that were donated internationally.

Second, we have conferred with the CDC, and it was able to confirm that it does not have data on the number of doses that were administered to federal agency employees versus individuals not employed by the federal government.

With an affidavit on how many of the Federal category doses were donated internationally as opposed to being sent to Federal agencies, and our representation that the CDC is unable to disambiguate between administrations to federal agency employees versus individuals not employed by the federal government, we trust all disputes relating to subpoenas issued to HHS agencies will be resolved.

Best,
Michael

From: Lachman, Matthew <MLachman@wc.com>

Sent: Friday, October 18, 2024 2:16 PM

To: Bruns, Michael (CIV) <Michael.Bruns@usdoj.gov>; Hoffman, Andy <AHoffman@wc.com>; James, Jhaniel N. (CIV) <Jhaniel.N.James@usdoj.gov>; Sternhell, Philip C. (CIV) <Philip.C.Sternhell@usdoj.gov>; Dunn, Hayley A. (CIV) <Hayley.A.Dunn@usdoj.gov>; Nagumotu, Kavyasri (CIV) <Kavyasri.Nagumotu@usdoj.gov>; Imbacuan, Michael (HHS/OGC) <Michael.Imbacuan@hhs.gov>; Yueh, Lena (HHS/OGC) <Lena.Yueh@hhs.gov>

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; Genevant Team <GenevantTeam@wc.com>

Subject: [EXTERNAL] RE: Arbutus v. Moderna, 22-cv-252 (D. Del.) - CDC and ASPR Depositions

Michael,

Thank you for the update. Will you be able to respond on Monday? If not, can you please let us know your availability for a call on Monday? With the Court’s October 25, 2025 deadline fast approaching, we need know soon whether the Court’s involvement will be necessary.

Best,

Matt

Matthew W. Lachman
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From: Bruns, Michael (CIV) <Michael.Bruns@usdoj.gov>

Sent: Wednesday, October 16, 2024 4:15 PM

To: Hoffman, Andy <AHoffman@wc.com>; James, Jhaniel N. (CIV) <Jhaniel.N.James@usdoj.gov>; Sternhell, Philip C. (CIV) <Philip.C.Sternhell@usdoj.gov>; Dunn, Hayley A. (CIV) <Hayley.A.Dunn@usdoj.gov>; Nagumotu, Kavyasri (CIV) <Kavyasri.Nagumotu@usdoj.gov>; Imbacuan, Michael (HHS/OGC) <Michael.Imbacuan@hhs.gov>; Yueh, Lena (HHS/OGC) <Lena.Yueh@hhs.gov>

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; Genevant Team <GenevantTeam@wc.com>

Subject: RE: Arbutus v. Moderna, 22-cv-252 (D. Del.) - CDC and ASPR Depositions

Andy,

We are actively investigating whether and how we can provide the requested information. We hope to be able to respond soon and are hopeful that we can resolve any issues without court involvement.

Best,

Michael

From: Hoffman, Andy <AHoffman@wc.com>

Sent: Friday, October 11, 2024 2:33 PM

To: Bruns, Michael (CIV) <Michael.Bruns@usdoj.gov>; James, Jhaniel N. (CIV) <Jhaniel.N.James@usdoj.gov>; Sternhell, Philip C. (CIV) <Philip.C.Sternhell@usdoj.gov>; Dunn, Hayley A. (CIV) <Hayley.A.Dunn@usdoj.gov>; Nagumotu, Kavyasri (CIV) <Kavyasri.Nagumotu@usdoj.gov>; Imbacuan, Michael (HHS/OGC) <Michael.Imbacuan@hhs.gov>; Yueh, Lena (HHS/OGC) <Lena.Yueh@hhs.gov>

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; Genevant Team <GenevantTeam@wc.com>

Subject: [EXTERNAL] RE: Arbutus v. Moderna, 22-cv-252 (D. Del.) - CDC and ASPR Depositions

Michael,

Will you please let us know if and when you expect to provide the requested information? The Court set a deadline of October 25 to depose third-party Government witnesses, so we need to know soon whether we can resolve these issues or whether we need to involve the Court.

Best,

Andy

Andy Hoffman

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From: Bruns, Michael (CIV) <Michael.Bruns@usdoj.gov>

Sent: Monday, October 7, 2024 12:39 PM

To: Hoffman, Andy <AHoffman@wc.com>; James, Jhaniel N. (CIV) <Jhaniel.N.James@usdoj.gov>; Sternhell, Philip C. (CIV) <Philip.C.Sternhell@usdoj.gov>; Dunn, Hayley A. (CIV) <Hayley.A.Dunn@usdoj.gov>; Nagumotu, Kavyasri (CIV)

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Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; Genevant Team <GenevantTeam@wc.com>

Subject: RE: Arbutus v. Moderna, 22-cv-252 (D. Del.) - CDC and ASPR Depositions

Andy,

We are looking into whether we can provide the requested information.

Best,

Michael

From: Hoffman, Andy <AHoffman@wc.com>

Sent: Wednesday, October 2, 2024 7:24 AM

To: Bruns, Michael (CIV) <Michael.Bruns@usdoj.gov>; James, Jhaniel N. (CIV) <Jhaniel.N.James@usdoj.gov>; Sternhell, Philip C. (CIV) <Philip.C.Sternhell@usdoj.gov>; Dunn, Hayley A. (CIV) <Hayley.A.Dunn@usdoj.gov>; Nagumotu, Kavyasri (CIV) <Kavyasri.Nagumotu@usdoj.gov>; Imbacuan, Michael (HHS/OGC) <Michael.Imbacuan@hhs.gov>; Yueh, Lena (HHS/OGC) <Lena.Yueh@hhs.gov>

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Subject: [EXTERNAL] Arbutus v. Moderna, 22-cv-252 (D. Del.) - CDC and ASPR Depositions

Michael,

We write to address issues that arose during the depositions of Drs. Jeanne Santoli and Robert Johnson. During both depositions, the Government repeatedly objected to questions within the scope of authorized testimony. The witnesses also were unprepared to answer questions within the scope of authorized testimony. We maintain that the Government's objections were improper and that the witnesses' lack of preparation justifies a motion for further testimony. However, in the spirit of compromise, rather than seek additional testimony, we are willing to drop all objections contingent on the Government (1) identifying, through documents and/or a declaration, the total number of doses provided to each federal agency nested under the "Federal" administration partner label identified in HHS-0000418, and (2) either produce data on the number doses that went to federal agency employees versus individuals not employed by the federal government or confirm that the Government does not have such data.

The information we seek falls squarely within the scope of authorized testimony and agreed-upon document discovery. Nearly eighteen months ago, HHS agreed to produce documents "sufficient to show the distribution of batches, lots, and/or doses of vaccine acquired by the Government under the -0100 Contract." HHS's Responses and Objections to Rule 45 Document Subpoena dated May 25, 2023. As part of this commitment, HHS produced HHS-0000418, which identifies vaccine administration partners, including one labeled "Federal." During Dr. Santoli's deposition, she identified seven federal agencies that fall within this label (VA, BOP, DoD, HRSA, State, FEMA, and HHS). Santoli Tr. at 35:9-36:11, 40:16-41:8. However, it is impossible to tell from the data HHS has produced how many doses were distributed to each of these respective agencies as well as how many doses were administered to agency employees versus beneficiaries.

The CDC's website (https://data.cdc.gov/Vaccinations/COVID-19-Vaccinations-in-the-United-States-Jurisd/unskb7fc/about_data) identifies the number of doses distributed to BOP, DoD, VA, and Indian Health Services (the last of which is not among the seven federal agencies purportedly nested under the "Federal" label). But the website does not identify the number of doses distributed to HRSA, State, FEMA, and HHS. Dr. Santoli suggested that data for HRSA, FEMA, and HHS falls within other jurisdictions such that it is impossible to know from the CDC's website exactly how

many doses went to these agencies. Santoli Tr. at 86:7-87:14. Dr. Santoli also testified that the number of doses distributed to State is not captured on the CDC's website. Santoli Tr. at 87:15-88:3.

For his part, Dr. Johnson was not prepared to identify the agencies nested under the "Federal" label in HHS-0000418, let alone discuss the number of doses that went to each agency. Nor was Dr. Johnson sure whether the Government maintains data on the number of doses that went to federal agency employees versus others. Johnson Tr. at 105:4-106:19. The holes in Dr. Santoli's and Dr. Johnson's deposition testimony are particularly troubling given that, collectively, they were authorized to testify about (1) the "content of, data underlying, and generation of HHS-0000418 and HHS-0000419; and CDC's process for tracking and preparing the COVID-19 vaccination information publicly available at: <https://data.cdc.gov/Vaccinations/COVID-19-Vaccinations-in-the-United-States-Jurisdi/uns-k-b7fc>" and (2) the "acquisition, distribution, use, and intended use of the Accused Products by HHS under the -0100 Contract."

Dr. Johnson testified that the Government "never shipped out a dose without a document." Johnson Tr. at 102:20-21. The Government likewise has stated that CDC "maintains data regarding shipment to the initial vaccine administration partner." Letter from M. Bruns to P. Haunschild dated September 1, 2023. Thus, we presume the Government possesses documents establishing the number of doses distributed to the federal agencies nested under the "Federal" label in HHS-0000418. We request that the Government produce such data, both to comply with the Government's document subpoena obligations and resolve issues left open during the depositions. We also request that the Government produce data on the number of doses that went to federal agency employees versus beneficiaries or confirm that the Government does not possess such data. These requests each fall squarely within the scope of authorized testimony and agreed-upon document discovery and are relevant to damages issues and the applicability of section 1498 to the facts of this case.

Please let us know by October 4 whether the Government will supply this information. In the meantime, we reserve all rights, including the right to move to compel further testimony from one or more additional witnesses to resolve the issues detailed above.

Best regards,
Andy

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